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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/529,587	04/14/2000	JOHN A. DANE	EPRNT-101XX	2045

7590 02/14/2005

Patent Legal Staff  
Eastman Kodak Company  
343 State Street  
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EXAMINER
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TODD, GREGORY G

ART UNIT	PAPER NUMBER
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2157

DATE MAILED: 02/14/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

09/529,587

Applicant(s)

DANE ET AL.

Examiner

Gregory G Todd

Art Unit

2157

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 07 December 2004 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The reply was filed after the date of filing a Notice of Appeal, but prior to the date of filing an appeal brief. The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☐ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: \_\_\_\_\_.  
Claim(s) objected to: \_\_\_\_\_.  
Claim(s) rejected: \_\_\_\_\_.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of a good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08 or PTO-1449) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

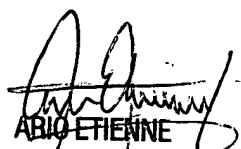
Continuation of 11. does NOT place the application in condition for allowance because: Applicants arguments are not persuasive.

Applicants argue there is no teaching of using a browser on a public network. In reply, as stated in Final Rejection to claims 32 and 34, Franklin clearly teaches the use of using a browser over the Internet for making purchases over the Internet to a financial institution (at least col. 4, lines 15-61; abstract; Fig. 2). DMW similarly uses the Internet and users using a browser for the purchase of pictures as digitally represented on the website.

Applicants argue Maniwa does not teach a stored electronic photo image being obtained by a photographer at an event. In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Maniwa is not relied on as teaching such features, but rather DMW teaches a photographer selling photos over the internet, wherein the photos are taken by a photographer from client events such as concerts, etc. It is well known that the source for any image or photograph eventually comes down to a photographer taking a picture of some event in time and DMW is simply relied on for doing such in an analogous art (ie. selling photos over the internet). An "event" is defined as something that takes place; an occurrence. Thus any photo taken of anything is an event.

Applicants argue there is no teaching of having customers having access to photographs taken by a photographer. As Applicant previously noted, DMW is directed toward selling photos over the internet, wherein the photos are taken by a photographer from client events such as concerts, etc. It is well known that the source for any image or photograph eventually comes down to a photographer taking a picture of some event in time and DMW is simply relied on for doing such in an analogous art (ie. selling photos over the internet). Again, any picture taken by anyone is considered to be a photographer and such a picture being taken at any time is considered to be any event in time. The claims do not suggest the photography being done by a Professional Photographer, for instance.

Applicants argue there is no image profiler for sequencing and captioning of images. Maniwa clearly discloses, as previously cited in Fig. 6 and similarly Fig. 9, the images as having been formatted and accordingly given an attribute of image file {1-m} and therefore sequenced and captioned accordingly for a directory service in order to retrieve the image file, as there would be no way to retrieve the image file if it isn't labeled or captioned in some manner. Such labeling or filename given to the image captioning the image name and description. Maniwa teaches formatting images and storing them along with a directory service for later retrieval of such images, such directory service allowing for an ordered retrieval of such images, thus a sequenced viewing of images.

  
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